Revenue (1928) Department

Mis SERIES.

G.O. No. 873

DATED 18-4-28

[Despatch Abstract.]

Suits - (South Kanara) - High Court A.S.No.259/21 - Escheat Properties of Durgi Shettithi - Compromise - Sanctioned.

C.F. 81

Revenue DEPARTMENT.

CURRENT No.

Received ASST. SECRETARY TO GOVT. REVENUE DEPARTMENT 19 JAN 1928 192 *Registered* 192

B3 (RS)

Subject.

SUITS (South Kanara) - High Court - A.S.No.259/2: Escheat - Possession of properties and collection of mesne profits - Obstruction to delivery of property - Fresh suit - Recommended.

ENCLOSURES.
No.
Spare copies

Reference A.No.1514/26-18

Station Madras, *Dated the* 17th January, 192 8

From B.G.Holdsworth Esquire, I.C.S.,
Secretary.

Land Revenue and

~~The~~ Board of Revenue, ~~Revenue~~ Settlement, ~~etc.~~

~~Separate Revenue.~~

N. Macmichael Esquire, C.S.I., I.C.S.,
Commissioner of Land Revenue.

~~Resolution~~

~~Reference.~~

Read the following.-

Letter from E.M.Gawne, Esq., I.C.S., Collector of South Kanara Ref.on A3-4477-21 dated 11th December 1927

1~~9~~ Ply (X) Board's Ref.No.A,1514-26-17 dated 29th November 1927.

I enclose the copy of the Sub Judge's order in R.E.A. No.30/27 filed by Government for the removal of the obstructi to the delivery of possession of the above escheat property.

2. The Sub-Judge has allowed the obstruction by holding that the properties which were admittedly purchased by Veeranna Shetty, grand uncle of Defendants 1 and 2 devolved

devolved on his death on his entire family including Defendants 1 and 2 and the three obstructors and that as Lingamma Shedthi the 1st obstructor and the senior most member and de jure Ejamanthi of the family was not made a party to the suit by Government the decree is not valid as against the family.

3. I find from the plaint in the suit that Defendants 1 and 2 were sued as the lawful heirs of their grand uncle Veeranna Shetty, the purchaser of the suit property as they alone have been and are still in actual possession and enjoyment of the property and also the joint pattadars thereof. It must be admitted that it is unfortunate that when the name of the elder sister appeared in the revenue records, she was not made a party. That however is now in the nature of 'spilt milk'. It is true that the three obstructors did not come forward before this either during the elaborate enquiry int the escheat case or in the subsequent lengthy litigation connected with it. The fact that neither Lingamma Shedthi nor any other obstructor put in any claim in response to the usual six months' notice published in the District Gazette inviting claims to the property is a strong point against her on any common sense view of the case. An affidavit of the Tahsildar of Udipi Taluk was filed in support of all these points.

4. The Government Pleader, Mangalore says that the Sub-Judge's order allowing the resistence is final subject to the result of a fresh suit under order 21, rule 103, and suggests that the Government Pleader, Madras, may be consulted as to whether a revision can be filed before the High Court in the circumstances of the case. I am afraid that no revision lies in this matter and that therefore there is no other remedy except the filing of a suit against the family of the Defendants 1 and 2 for possession of the properties with mesne profits. I solicit orders as to how I should proceed in the matters

5. As no delivery of possession of property could be effected now, I think Government can withdraw the sum of

of Rs.1903-0-10 deposited in Court as compensation for improvements unless the Government Pleader, Madras, is of opinion that a revision lies to the High Court.

6. As regards the mesne profits decreed against Defendants 1 and 2 from 1898 up to the date of obstruction and also for costs decreed against them, the Government Pleader, Mangalore says that he has applied for taxation of costs of the original Court (Sub-Court) and also taken out a commission to ascertain the mesne profits and that he will later apply for a warrant of arrest against the Defendants for realizing them.

7. A copy of the Government Pleader's letter referred to is submitted.

8. My own opinion is that though this decision by the Sub Judge is a set back to the Government, it is a disaster to the Defendants, who will now have to start defending the suit all over again with funds brought out of the same pockets. With such a prospect in view the Government may be able to conclude the matter without another suit, - I will not say by intimidation, but at least by showing a firm determination to start all over again with a fresh suit.

REFERENCE:

Submitted to Government for orders.

2. The Board has consulted the Government Pleader, Madras in the matter. He agrees with the Collector in considering that the best course now is to file a fresh suit against the obstructors to the delivery of possession of the lands. A copy of his opinion is enclosed. The Board agrees with him and requests that the institution of a fresh suit for recovering possession of the property may be sanctioned

NK

18.1.28

or Secretary.

to Government, Revenue Department, with
pinion of the local Government Pleader and
Pleader, Madras and the judgment of the
's Court in the obstruction petition.

Copy of letter, Ref.No.30/27 dated 3rd December 1927 from Rao Saheb B.Mahabala Hedge, B.A.B.L., Government Pleader and Public Prosecutor, Mangalore, to the Collector of South Kanara.

The Sub Judge has allowed the resistance to delivery properties as he holds that the suit properties admittedly purchased by Veeranna Shetty, grand uncle of defendants 1 and 2, devolved on his death on his entire family and belonged to the family and not on defendants 1 and 2 exclusively and Lingamma Shedthi, the 1st obstructor, the seniormost member and de jure Ejmanthi of the family, was not made party to the suit by Government and the decree passed in the suit is not valid as against the family as it purports to be one against defendants 1 and 2 only. Certified copy of the order of the Sub Judge is enclosed.

Referring to the plaint in the suit, it appears defendants 1 and 2 were not even sued as representing their family but in their individual capacity. It is not known as to why the de jure Ejamanthi Lingamma Shedthi was not made a party to the suit. The genealogy of the family of defendants 1 and 2 prepared by the Revenue authorities and filed in the suit shows the existence of the present 1st obstructor Lingamma Shedthi as the elder sister of the 1st ~~xxxxxxxxx~~ defendant and also the seniormost member in the family. It was, however, contended on behalf of Government in the obstruction proceedings that at the time of escheat proceedings the so-called Lingamma Shedthi never came forward and urged her claim on behalf of the family and it was only defendants 1 and 2 who were pattadars of the suit properties that came forward and urged their claim and the decree obtained against them is valid and binding as against their family also. Judgments of the Sub Court and of the High Court and the patta standing in the name of defendants 1 and 2 in respect of suit properti

and Hathkardas from 1918 to 1927 showing the payment of assessment by defendants 1 and 2 in respect of the suit properties had been produced by Government in the obstruction proceedings for the purpose of showing that the decree bona-fide obtained against defendants 1 and 2 who were the pattadars in enjoyment of the suit properties is valid and binding against their family and the principles enunciated in 29 M.L.J. 698 and 36 M.L.J.106 were quoted in support of the proposition on behalf of Government. Those decisions purport to show that a decree bona-fide obtained against a wrong person is valid and binding against the real owners of the properties.

But the Sub Judge ruled that those rulings are not applicable to the facts of the present case and allowed the resistance.

This order allowing the resistance is final subject to the result of a fresh suit under order 21 rule 103. There is thus no appeal against the said order and the Government Pleader at Madras may be consulted whether a revision can be filed before the High Court under the circumstances of the case, and if no revision lies, a suit can be filed against the family of defendants 1 and 2 for possession of the properties with mesne profits.

In the meanwhile, as no delivery could be effected now, we can withdraw the sum of Rs.1903-0-10 deposited by Government in Court, as compensation for improvements. But in case a revision lies to the High Court, it will be safer to wait until the revision is disposed of, and the Government Pleader at Madras may also be consulted whether the amount of Rs.1903-0-10 deposited by the Government can be withdrawn pending disposal of the revision petition.

We can now proceed against defendants 1 and 2 for payment of mesne profits decreed against them from 1898 up to the date of obstruction and also for costs decreed against them and accordingly I have applied for taxation of costs incurred in this Court in the original suit and have also taken out a commission to ascertain the amount of mesne profits from 1898 till the date

of

of obstruction. Later I shall apply for a warrant of arre against defendants 1 and 2 for payment of the mesne profits and costs.

Re.1-4-0, expenses incurred for obtaining certified copy of the order may be ordered to be paid to me. I have paid to Court Rs.50-0-0 commission fee. I request that this amount may also be paid to me as advance in addition to Rs.81-15-0 paid to me as advance on 24th October 1927.

Copy of Madras Govt Pleader's Opinion

Opinion No.1. In re. U.O.No.A-1514 dated 19-12-1927 Suits (South Kanara) - High Court A.S.No.259/21- Haladi Escheat - Possession of properties and collection of mesne profits.

Government having obtained a decree for possession of certain properties on the ground that the properties had escheated to the Crown on the death of Durgi Shettithi, proceeded to execute the decree and obtained possession of the properties. The Government had made only 2 persons (defendants 1 and 2) as party defendants to the suit. When execution proceedings were taken, obstruction was caused by 3 persons, of whom the first was the senior most lady of the Aliyasanthana family of which the defendants were members. Obstruction to the delivery of possession to Government was caused on the ground that the properties were in the possession of the Aliyasanthana family of which the first obstructor Lingama Shettithi was the Yajamanathi or Karnavathi of the family and that the decree obtained in a suit to which she was not party could not bind her; and that as she was in possession of the properties on behalf of the family, she could not be dispossessed in execution of the decree to which she was not a party.

The Subordinate Judge accepted her contention and dismissed the petition filed by Government for removal of the obstruction caused by the Yajamanathi and 2 others -

under Order 21, rule 99 Civil Procedure Code.

The question is what further steps should be taken in the matter. Under Order 21, rule 103 C.P.C. a party against whom an order is made under rule 99 may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, the order shall be conclusive. Thus a regular suit as provided by order 21, rule 103 C.P.C. is the proper remedy to be followed in the present case.

No doubt, it is open to the High Court to revise orders passed by Lower Courts in circumstances mentioned in Sec.115 C.P.C. or Sec.107 of the Government of India Act. But it seems to be the practice of the High Court not to interfere in revision (except in exceptional cases), if the petitioner has got any other sufficient remedy. In the present case the remedy by regular suit being the proper procedure prescribed by Order 21, rule 103 C.P.C., it seems to me to be extremely doubtful whether the High Court would interfere in revision if a revision petition be filed in the High Court against the order passe by the Subordinate Judge. Though the order does not specifically say so, in effect it holds that the Yajamanathi the first obstructor is in possession of the properties. Unlike the case of Marumakkathayam Tarwad of Malabar where the senior most male is by law and custom the Karanavan and manager of the family (Tarwad), in the case of Aliyasanthana families of South Kanara, whatever doubts there might have been once entertained on the point, the view that now prevails is that the senior most member of the family, whether a male or a female, is the manager and the person entitled to manage; if the senior most be a male, he is called Yajaman; but if the senior most should happen to be a female, she is called Yajamanathi. There being no reasonable doubt at present on the point, it must be taken that the 1st obstructor the senior most lady of the family is according to law and custom the Yajamanathi or the manager of the family. The decree obtained against some of the junior members (not

even

even described as sued as representing the family) could not as such bind the family or the Yajamanathi. It is unfortunate that the Yajamanathi and other members of the Aliyasanthana family were not made parties to the suit. In the circumstances a regular suit would seem to be the only effective and proper procedure to be followed in the case.

The suit was evidently defended properly and bona fide by the two members of the family who were made ~~xxx~~ parties to it as defendants 1 and 2. They have preferred appeal to the Privy Council and the same is now pending before the Privy Council. One cannot resist the inference that the present obstruction (in all probability) has been caused by the Yajamanathi at the instance of the 2 defendants, though technically no doubt the Yajamanathi was entitled to cause the obstruction. If the money portion of the decree obtained against defendants 1 and 2 ~~dants 1~~ are executed and the defendants arrested in execution, it is just possible that they would arrange to have the matter settled without the necessity for a fresh suit. In any event, the orders already passed by the Board that the money portion of the decree should be executed promptly against defendants 1 and 2 is sure to have some beneficent effect.

In the circumstances, I am of opinion that a regular suit-and not a revision petition to the High Court-is the proper procedure to be followed hereafter in this case.

Such a suit is governed by article 11(a) of the Limitation Act, which prescribes a period of one year ~~fr~~ the date of the order. No doubt the general article 149 prescribes a period of 60 years for any suit by or on behalf of the Secretary of State for India in Council; but to avoid all contentions on the matter it is probably better that the suit is filed before the expiry of one year from the Sub-Judge's order which is dated 11th of November 1927.

23

Revdpt

OM. No. 326 B/28-1) 1-2-28

Suits – (South Kanara) – High Court – A.S. No. 259/21 – Escheat – possession of properties & collection of mesne profits – obstruction to delivery of property – fresh suit. Recommended

From the Board of Rev (d.R.o.s.)

Ref. A. 1574/26-18. dt 17.1.28.

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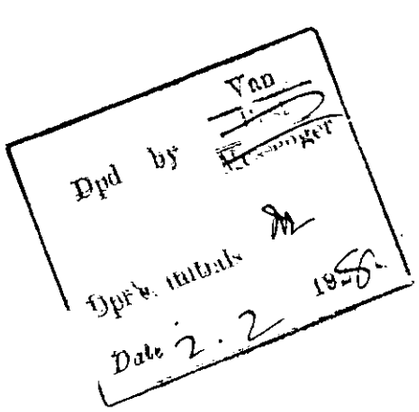
The Board of Revenue is requested to report, with reference to the value of the escheated property and the costs incurred by the Govt in the last suit, and in the appeal before the High Court and the costs (duly) to be incurred by them in the Privy Council appeal and in the new suit proposed to be instituted, whether it is worthwhile to pursue the matter further by the institution of a fresh suit

1.2.28

1.2.28



The Board of Rev (d.R.o.s.)

Confidential.

25

B3(88)31

REVENUE DEPARTMENT.

CURRENT No. 975 B - N 26.2.28

Received ..... 192 . Registered 25.2 1928

SECRETARY TO GOVERNMENT 25 FEB 1928 REVENUE DEPARTMENT

Subject.

Suits - (South Kanara) - High Court - A.S.No. 9/21 - Escheat - Compromise proposals.

ENCLOSURES
No. .....
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Spare copies .....

Reference No. A.1514-26-20 (Confdl.)

Station Madras, *Dated the* 24th February 1928

From B.G.Holdsworth, Esq., I.C.S.,
Secretary, Land Revenue.
The Board of Revenue, Revenue Settlement, etc.
Separate Revenue.

N.Macmichael, Esq., C.S.I., I.C.S.,
Commissioner of Land Revenue.

Resolution
Reference.

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Read the following paper:-

Letter from E.M.Gawne Esq., I.C.S., Collector of South Kanara, Ref.on A.3-4477-21, dated the 21st February 1928.

Board's Reference No.A.1514/26-19 Confdl., dated 8th February 1928.

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The Defendants and other members of their family have approached me with fresh proposals for compromise and they are under examination. I shall submit a report in the matter shortly.

Reference.

Submitted to Government with reference to their Memorandum No.326 B/28-1, dated the 1st February 1928.

N 23 ej

N Kaicpillai
24.2.28.
for Secretary.

To the Secretary to Government,

Revenue Department.

24.2.28

Confidential.

27

C.F. 31

REVENUE DEPARTMENT.

B & (RS) 02 2839

CURRENT No. 1593.

Received ..... 192 Registered 28 - 3 - 1928.

SECRETARY TO GOVERNMENT 28 MAR 1928 REVENUE DEPARTMENT

Subject.

Suits - (South Kanara) - High Court - A.S.259/21 -

Privy Council appeal - Escheat - Compromise - Recommended.

ENCLOSURES.

No. .....

.....

Spare copies .....

Ref. A. No 1514/26-21 (Confdl).

Station Madras, *Dated the* 23rd March 1928.

From- B.G.Holdsworth, Esq., I.C.S.,

Secretary, Land Revenue,

~~The~~ Board of Revenue, ~~Revenue~~ Settlement, ~~of~~ ~~Separate Revenue~~.

~~Resolution~~ Reference.

N.Macmichael, Esq., C.S.I., I.C.S.,
Commissioner of Land Revenue.

Read the following paper:--

Letter from E.M.Gawne, Esq., I.C.S.,Collector of South Kanara, Ref. on No.A.3-4477-21, dated the 5th March 1928.

Board's Reference No.A.1514/26-19/Confdl., dated the 8th February 1928.

M 25-26 cf My letter Ref.on A3-4477-21, dated 21-2-1928.

M 25-26 cf In continuation of my letter quoted above, I submit herewith a copy of the petition of the Defendants Duggappa Bhandary and others and also the adult members of their family proposing a compromise of the suit.

M 31-33 cf

2. The terms of compromise proposed by them are that they will withdraw from the appeal now pending before the Privy Council, that they will give up their claim for the amount decreed for costs and improvements and pay the costs of Government decreed provided the Government give up their claims for mesne-profits decreed and convey to the defendants' family items I & III and the muli right in item II on receipt of the value thereof which is to be fixed on the net income of the property at Rs.100/- for every mura of rice rent. In the previous proposal of compromise referred to in my letter Ref.on A.3-4471-21, dated 30-8-27 submitted in reply to Board's Reference No.A.1514-26-II dated 23-5-27, the Defendants had agreed to pay the Government all the costs of the suit and appeals incurred by Government. As the present compromise proposal agreeing to pay the costs of Government decreed was rather ambiguous and tended to give rise to the question of proportionate costs of the suit in the Sub-Court which when taxed in the Sub-Court according to the direction in the High Court decree would be reduced considerably, I asked the Vakil who filed the compromise petition on behalf of the Defendants whether they would agree to pay the Government's costs actually incurred in the Sub-Court and High Court as detailed in the margin. The defendants and other members of the family have agreed to pay them.

Sub-Court	Rs.2339-12-8
High Court	Rs.1786--0-2
	4125-12-10

3. The compromise proposals do not at first sight seem to be very advantageous to Government. The immediate advantage which Government will derive by the proposal is that Government will get the price of the property amounting to Rs.5250/- now without having to wait for the lapse of 12 years and without having recourse to the risk of a fresh suit which has now become inevitable. The Government also will not have to pay Rs.1903-0-10 for improvements effected to the property. As against that the Government will have to give up the claim for mesne profits which with interest have been calculated by the Court Commissioner at Rs.8476-9-4 from 7-9-1898

to 19-1-27. The costs of Rs.4125-12-10 which the defendants have agreed to pay to Government are considerably less than what have actually been incurred. Owing to the charges of the Government Solicitor, Madras. it seems to me that it is worth while to accept the proposals and end a protracted litigation. The Government Pleader, Mangalore, who was consulted by me was in favour of acceptance and has all along expressed a doubt whether the Government would succeed in the Privy Concul in retaining the mesne profits for such a long period - 29 years from 1898 -and said that it was possible that mesne profits for only 3 years prior to the filing of the suit would be decre in view of the High Court ruling in 15 Madras Weekly Note 692. This would reduce mesne profits to a negligible amounh. Also, apart from legal arguments, one may feel a doubt about claiming the income from the property (the mesne profits) for so many years before the suit was launched with interest amounting by now to far more than the value of the property (Rs.8476 against Rs.5250). When the question of mesne profits is in doubt I do not see why the proposals should not be accepted especially as the value of the property is insignificant. But the price offered is quite fair in view of the situation of the land in the interior of the Coondapoor Taluk. Moreover the attitude of the Government as can be seen from Memorandum No.326-B-28-1, dated 1-2-28 communicated with the Board's order under reference seems to be that it is not worth while to pursue the matter further by filing a fresh suit. I recommend therefore that the Government may be addressed to accord sanction for compromising the suit on the terms agreed to by the defendants and other members of their family. I think the defendants have been drive to accede to these favourable terms largely by fear of the cost of the Privy Council proceedings.

4. The certified copy of the Commissioner's report regarding the mesne profits, copy of the Mangalore Government Pleader's letter dated 13-2-28 and copy of defendants' Vakil's letter dated 29-2-28 are enclosed. The certified copy of the

Commissioner's report may be ordered to be returned when done with.

Reference.

Submitted to Government in continuation of the Board's Reference No.A.1514-26-20 (Confdl), dated the 24th February 1928.

2. The Board considers that the terms of compromise recommended by the Collector are reasonable and may be accepted.

3. The estimated value of the property as entered in the escheat proposals sanctioned by Government in their order No.2317 Rev., dated 10th October 1916 namely Rs.21,242-9-5 includes the value of certain lands and buildings in respect of which the mulgeni right (the right to receive the mulgeni rent) only has been decreed to Government. The market value of Rs.5250/- now offered by the defendants for the property decreed to Government is fair being slightly in excess of the net mesne profits on the property (excluding interest) for 29 years as fixed by the Court Commissioner and may be accepted.

for Secretary.
27.3.28.

To the Secretary to Government, Revenue Department,
with one enclosure (to be returned).

R./26-3.
27.3.28

Without prejudice.

Before the Collector of South Kanara.

Suits:- O.S.No.2 of 1919 on the file of the Sub-Court, South Kanara.

A.S.No.259/1921 on the file of the High Court.

R.E.P.No.210 of 1926 on the file of the Sub-Court (pending disposal)

1. Duggappa Bhandary, grand nephew of Veeranna Shetty, residing in Haladi village, Udipi Taluk.
2. Ramayya Shetty, brother of 1st Petitioner, residing in Haladi village, aforesaid.) Petitioners

Respectfully sheweth as follows:--

1. That the above suit was instituted by the Secretary of State for India in Council against the petitioners, and another person named Venkamma Shedthi claiming possession of 3 items of property with mesne profits from September 1898 on the ground that the last owner of the properties had died without leaving any heirs, was dismissed with costs by the Subordinate Judge of South Kanara.

2. In A.S.No.259 of 1921 on the file of the High Court of Judicature at Madras, preferred by the Secretary of State against the decree of the Subordinate Judge, the decree of the Lower Court was reversed and petitioners/who were defendants 1 and 2 in the above suit were directed to deliver possession of items I and III with mesne profits from September 1898 on payment of the value of the improvements namely, Rs.1903-0-10 by the Secretary of State. The mulgeni in respect of item II of the plaint Schedule was upheld. The petitioners were also directed to pay and receive proportionate costs throughout.

3. The appeal preferred by the petitioners to the Privy Council against the decision of the High Court is pending disposal.

4. According to the decree of the High Court the relative position of the parties is as follows:--

Defendants 1 and 2 (petitioners) are bound to

(a) deliver possession of items I and III

(b) pay mesne profits at the rate of

i. 65 muras of rice and Rs.75-5-0 less Rs.154-7-0 and cesses thereon per annum in respect of item (I)	From 1893 till delivery of possession.
ii. 0-11-0 per annum in respect of item (III).	
iii. Rs.76-0-0 less Rs.72-11-0 and cesses thereon in respect of item No.(II).	From 1898.

(c) Pay Rs.1786-0-2 for costs of A.S.No.259 of 1921.

(d) Pay the proportionate costs in the Sub-Court to be taxed.

Plaintiff (Secretary of State for India) has to

(a) Pay Rs.1903-0-10 for value of improvements.

(b) Pay Rs.428-6-1 for costs of A.S.No.259 of 1921.

(c) Pay the proportionate costs in the Sub-Court to be taxed.

5. 2nd petitioner is the Potail of Haladi and your petitioners earnestly wish that the matter should be amicably settled and hope that the Government will be kind and generous towards them and the members of their family and humbly approach your Honour with a request to settle the claim on the following terms namely.

(a) Petitioners will withdraw from the appeal now pending before the Privy Council.

(b) Petitioners will give up their claim for the amount decreed for costs and improvements.

(c) In addition, petitioners will pay to the Government value of the properties at the rate of Rs.100/- for an income of one mura of rice net pet year.

(d) And pay the costs decreed.

Since agreed to pay the Suit Costs as shall be incurred in Sub Court & High Court 12/25-12-11 (M 36 C 7).

overnment may be pleased to

(a) Give up its claim for mesne profits decreed.

(b) Convey items (I) and (III) and the muli right in item (II) on receipt of the value thereof to be ascertained on the basis stated above.

Your petitioners therefore pray

that your Honour may be pleased to consider the above

terms favourably and enable them to settle the matter amicably.

I, B.Venktrya Baliga, Pleader, do hereby state that I have been authorised by --

(1) Lingamma, the elder sister of the petitioners and the present Ejamanthi of the family,

(2) Derayya Shetty, (3) Venkappa Bhandari (4) Krishnayya Shetty, (5) H.Subbanna Shetti (6) Krishnamma Shettathi (7) Sooramma Shettathi (8) Rukamma Shettathi (9) Chandramma Shettathi (10) Manjamma Sehttathi and (11) Kanakamma Shettathi to give their consent to the terms proposed by Duggappa Bhandary and his brother Ramayya Shetty fo settling the disputes relating to the Escheat proceedings referr to above and that I on behalf of my clients hereby consent to the matter being settled as proposed by the petitioners. The consent is given "without prejudice" to the legal rights of my clients.

(Sd) B.Venkatraya Baliga,
Pleader.

35

Copy of letter dated 13-2-28.

From the Government Pleader and Public Prosecutor, Mangalore.

To the Collector of South Kanara.

Suits - High Court - A.S.259/21 - Haladi - Escheat (under appeal to the Privy Council) Proposal of compromise.

In reply to your letter dated 27th January last regarding proposals of compromise in the matter of Haladi Escheat case, I am of opinion, the proposal 'to pay costs decreed' may give rise to the question of proprtionate costs. Actual costs incurred by Government in Sub-Court as per decree of Sub-Court is Rs.2339-12 and the costs incurred by defendants in Sub-Court is Rs.1035-11-

If proportionate costs in Sub-Court have to be taxed according to the direction in the decree of High Court, I think a considerable portion of the actual costs incurred will be lost to Government.

In the High Court proportionate costs of the appeal decreed to Government is Rs.1786-0-2 and proportionate costs decreed to defendants against Government is Rs.428-6-1.

In view of Government giving up their claim for mesne profits and of Government agreeing to convey properties to defendants at the rate proposed it will be reasonable and equitable that the defendants and the members of their family should pay all costs incurred by Government according to court records.

The ruling that I had occasion to refer to regarding mesne profits allowed for only 3 years is the ruling in 15 M.W.N.692. The rate of price proposed for the properties in Haladi village which is in the interior, is I think a fair rate.

The properties in question being insignificant and the question of mesne profits is rather a doubtful one, it may be worth while to consider the terms of proposed compromise; but all the same in my opinion I think the parties may be called upon to state as to whether they would pay the costs incurred according to Court records and not proportionate costs.

As to chances of success or failure in the Privy Council appeal, I think the learned Government Pleader at Madras may be

consulted.

Records sent to me are herewith returned.

Copy of letter dated 29-2-1928.

From - M.R.Ry. K.Sadasiva Adiga Avl., B.A., B.L., High Court Vakil, Mangalore.

To - The Collector of South Kanara.

With respect to your Ref. on A.3-4477-21, dated 18-2-1928, in the matter of the proposals of compromise in Paladi Escheat, I have the honour to inform you that the defendants and other members of the family agree to pay the Government's costs of Rs.2339-12-8 in Sub-Court and Rs.1786-0-2 in the High Court, in all Rs.4125-12-10.

(Sd) K.Sadashiva Adiga,
Vakil for defendants.

The members of the family other than the defendants are also willing for the settlement of the claim and pay the costs as stated above.

(Sd) B.V.Baliga,
Pleader.

Revision

Rev Dept

for No. 967 (K)
23-5-27

for No. 1998 (X)
10-10-27

Rp 326 B/28.

Suit (S. Kanara) - High Court - A.S. No. 259/21 - Escheat - possession of properties & Collection of mesne profits - Obstruction to delivery of property - Fresh Suit - Recommended.

From the Board of Rev (A.R.O.S)

Rf A. 1514/26-18 dt 17.1.28.

To Secy

Please see pages 1-9 C.F. The facts of the Case are as follow :-

In A.S. No. 259/21 on the file of the High Court, the High Court held that Certain properties belonging to an Aliya Santana family in South Kanara escheated to the Govt for want of heirs. The High Court also decided that the Govt were entitled to mesne profits on the properties decreed. The Govt had made only 2 persons (defendants 1 and 2) as party defendants to the Suit.

pp 44 of (K)

On 1-7-26 the Coll^r of S. Kanara filed a petition in the Mangalore Subcourt for the execution of the High Court's decree. The Subjudge ordered the delivery of the property But it could not be effected owing to the obstruction caused by 3 persons - Lingamma Shedthi and 2 others. This Lingamma Shedthi was the Senior-most lady of the

pp 65 of (K) & pp 69-70 of (K) & para 2 and p 3 of (X)

Gp's letter on p 7 C.F.

Aliyasanthana family of which the defendants were members. Her Contention was that the properties were in the possession of the Aliyasanthana family of which she was the yajamanthi at Kannavalthi of the family and that the decree obtained in a suit to which she was not a party could not bind her. As she was in possession of the properties on behalf of the family she could not be dispossessed in execution of the decree. The Subjudge accepted her Contention and dismissed the petition filed by the Govt for the removal of the obstruction under Order 21. Rule 99 of Civil Proc. Code. para 1 of G.P.'s letter on pp 7 cf & para 3 of Subjudge's order at p 15-17 cf. p 19 cf

The Govt pleader, Madras, says that in the Case of Aliyasanthana families of S. Kanara the view that now prevails is that the Senior-most member of the family whether a male or a female, is the manager and the person entitled to manage and that the decree obtained against some of the junior members could not as such bind the family or the Yajamanthi — even if the junior members are described as sued as representing the family. In the Circumstances, the G.P. says that a regular suit and not a revision petition pp 8-9 cf p 9 cf

to the High Court is the only effective and proper procedure to be followed hereafter in this Case. There is time for filing this Suit till 11-11-1928. The Board agrees with the G.P's opinion and requests that the institution of a fresh Suit for recovering possession of the property may be sanctioned.

A draft order is submitted for approval

last para of G.P's letter on p 9 C.F

p 3 C.F

But is it worth it We seem to have got very little out of the last suit presumably that little is the most we can get out of another suit which Govt will not Govt Somethg appreciate Examine w.r.t. the value of the property subject of the last suit.

11.1.28

11.1.28

Needs ?

G. Collector for MRO

C.V

To secy

In col. 7 of the statement on p. 3. G.O No. 2317 dy 10-10-1916 the market value of the property was estimated to be Rs 21,242-9-5

At page 31 of G.O No. 967 dy 23-5-27 the Board of Revenue pointed out, in connection with the objections, if any, which Govt could put forward ~~for the application for leave to appeal to the Privy Council which~~ against the defendan

application for leave to appeal to the Privy Council The value of both the Suit (Rs 41,888-11-8) and the appeal (Rs 32,499-11-8) in question is more than Rs 10,000/-, the limit prescribed in S 109 of the Civil Proc. Code

P 319 (k)

But in his letter of 30-8-27 on page 4 of G.O. No. 1998 of 10-10-27, the Coll^r of S. Kanara ~~has~~ stated that the price of the property amounted to Rs 7,500/-; and that the Govt had also a claim for mesne profits which, with interest, approximately comes to about Rs 9000/-. It is not known how the Coll^r arrived at the figure of Rs 7500 as the price of the property. ~~The information may be called for from the Board~~

In the same letter the Coll^r ~~has~~ stated that the Costs incurred by the Govt till the end of August 1927 was Rs 6000/- The amount deposited by the Govt on account of Compensation for improvements effected by the defendants after 1905 is Rs 1903-0-10. There is no information as to the further Costs incurred by the Govt after August 1927, viz in Contesting the obstruction to the delivery of the property caused by Linganna

Sheoji and others.

Pr 35-36 of (K)

Another suit will cost the Govt. something appreciable. The defendants in the last suit have appealed to the Privy Council against the High Court's decision. The Govt have in any case to contest that appeal. But the

Pr 1-2 of (K)

High Court's decree in so far as the possession of the property is concerned, is useless as the

Pr 11-21 C.F.

Sub-judge's decree upholding the obstruction by the Senior most member of the family has practically nullified the effect of the High Court's decree, though it is still open to the Govt to take execution proceedings against the defendants in respect of mesne profits (about Rs 9000/-) decreed by the High Court and costs, & the G.P. is taking the necessary action in this direction (Pr 6-7 C.F.).

Pr 4 of (X).

If the value of the property is only Rs 7500/- as was last stated by the Collector, it may not be worthwhile to institute a fresh suit for its possession. But as there is time till 11-11-28 for filing a suit, the Board's opinion may be invited on the question raised by the Secretary on p. 3 N f.

Draft memo submitted for approval

Issued

From the Board of Rev (Land S) - Refle Pp 25-26.
No A 1514/26-20 Confd dy 24. 2. 28

To Secy

Submitted for perusal
of the Board's Refle on pp 25-26 C.f. The
Board will submit to the Govt in
due course the Collector's further Vide.
report as regards the Compromise proposals. P 25 C.f
It may be awaited

Dy 25.2.28

Dy 27.2.28

From the Board of Rev (Land S) Refle Pp 27-36 C.f
A. 1514/26-21 Confd dy 23. 3. 28.

To Secy.

Please see the Collector's
letter and the Board's Refle on pages 27-30 C.f.
In A. S. No 259 of 1921 the
High Court gave a decree to the Govt for the Suit
properties items I and III with mesne* profits Pp 1-2 of (K)
from September 1898. The High Court decreed in @ Price Rs 525
favour of the defendants the value of the * Rs 8476
improvements effected after 1905. Proportionate P 31 C.f
costs also were decreed. The defendants
have appealed to the Privy Council against the. Y Rs 1903.
High Court's decision.

The following details are given in

Pr 27-30 cf the Collector's letter

Pr 28 cf

Pr 42-47 cf

Pr 28 cf

The value of the properties amounts to Rs 5250/-. The mesne profits for 29 years from 1898, with interest amount to Rs 8476. (x) 9-4. The Govt's costs actually incurred in the Sub Court and High Court are Rs 4125-12-

The value of the improvements effected by the defendants after 1905 which the Govt have pay is Rs 1903-0-10.

The defendants and other members of the family have now approached the Coll with proposals for compromise of the suit. The terms of the Compromise proposed by them are that they will

Pr 32 cf

1) withdraw from the appeal now pending before the Privy Council.

2) give up their claim for the amount decreed for costs and improvements. cf

3) pay the Govt' costs actually incurred in the Sub Court and High Court. viz Rs 4125-12-10.

In return the Govt have to give up their claim for mesne profits, decreed which with interest amounts to Rs 8476-9-4. and Convey to the defendants' family items I and III and the mukki right in item II on receipt of the value thereof which is to be fixed on the net income of the property at Rs 100/- for every mana of sirkent

It is admitted by the Coll^r. that the Compromise proposals do not at first sight seem to be very advantageous to Govt; but for the reasons suggested by him in para 3 of his letter on pages 28-29 c.f he says that it is not worthwhile to pursue the matter further by filing a fresh suit which has now become inevitable. He therefore recommends the Compromise of the Suit and the local Govt and Board of Rev. agree with the Coll^r. The Board considers that the terms of Compromise are reasonable. A draft order is submitted for approval ~~Mayhew Seat to Dir for accept~~

N/Fly p 3 c/f

0.318
31.3.28

15.4.28

16.4.28

15.4.28

Sectt LT-5 (1)—8,004—26-10-27. (6)

45

Revenue **DEPARTMENT.**

	Date.	Initials.
When received for Fair-copying.		
When copied ..		
When examined ..		
When signed ..		
When despatched ..		

READ AGAIN G.O. No. 976 Rev, dated 23--5-- 1927

" " " " " 192

READ ALSO:—

C. No. 326 B From the Board of Rev. (L.R.&S.) No. A.1514/26-18, dated 17--1-- 1928.

" " -do- " A.1514/26-21 23--3-- 1928.

" " " " " 192

Op. docket 17.4.28

ORDER.

Mis.

No. 873, dated 18.4. 1928.

The Government accept the recommendation of the Board of Revenue and sanction the compromise of the suits in O.S.No.2 of 1919 and R.E.P.No. 210 of 1926 on the file of the Sub-Court, South Kanara, and A.S.No.259/1921 on the file of the High Court which is under appeal to the Privy Council, on the following terms:--

Terms.

(1) The defendants will withdraw from the appeal now pending before

the Privy Council.

(2) The defendants will give up their claim for the amounts decreed on account of costs in the Sub-Court and in the High Court and of improvements effected to the property.

Rs 1903/- + Rs 428 + Costs in Sub Court to be fixed

(3) The defendants will pay the costs incurred by Government in the Sub-Court and High Court, viz. Rs.4,125-12-10.

Rs 8476

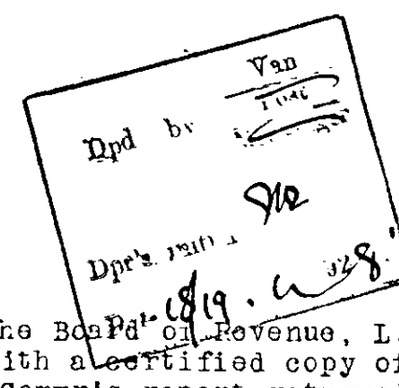
(4) The Government will give up their claims for mesne profits decreed.

(5) The Government will convey to the defendants' family items I and III of the suit property and the muli right in item II of the suit property on payment by the defendants' family to the Govt. of ~~the value thereof which is to~~ be fixed on the net income of the property at ~~Rs.100/-~~ for every ~~mura of rice~~ rent.

Rs 5250

31.3.49

17.5.49



To the Board of Revenue, L.R.&S. with a certified copy of the Commr's report returned.

C.F. 31

Revenue **DEPARTMENT.**

CURRENT No.

Rev 3351 B

Received ..... 19 . *Registered* 2.12. 1930.

Subject.

Suits - (South Kanara) - High Court -A.S.259/21 - Haladi Escheat case - Return of documents.

ENCLOSURES.
No. .....
.....
Spare copies .....

Reference A. No. 3616/30-1.

Station Madras *Dated the* 27-11-1930 19

From
A.R.MacEwen Esq., M.C.,I.C.S.,
Secretary,
~~The~~ Board of Revenue, ~~Revenue~~ Settlement, ~~etc.~~
~~Separate Revenue.~~
Land Revenue.

Resolution
Reference.

H.A.B.Vernon Esq., C.S.I., C.I.E.,I.C.S.,
Commissioner of Land Revenue.

***

Read the following:-

Letter from G.W.Wells Esq., M.A.,I.C.S., Collector of South Kanara, Ref. A.3-No. 10191/30, dated 14th November 1930.

REFERENCE:

X H-11-29 (N)

The Board requests that the Government may be pleased to return the certified copy of the Sub Judge's order in R.E.A.30/27, which was submitted with the Board's Reference A.1514/26-18, dated 17-1-1928 disposed of in their order 873 Mis., dated 18-4-28. The copy of the order is required by the Collector of South Kanara.

H-11-28 (N)

(N)

Rec 1/12

To the Secretary to Government, Revenue Department.

for Secretary. 1-12-30

s.s./28-11.

Rev. Department

Suits (South Kanara) - Madras High Court - A S 259/21 - Haladi Escheat Case - Return of documents

Bds Ref A 3616-3

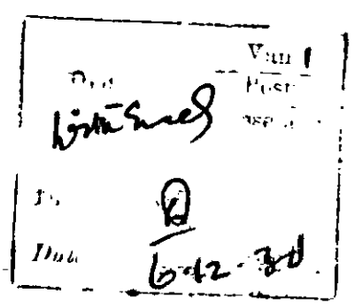
D) 27-11-30.

Encls No. 3351 B-30-1 D) 3.12.30

The certified copy of the order in R. E. A 30 of on the file of the Sub-Judge, South Kanara is returned herewith to the Board of Revenue

3.12.30

Pt 1-21 of (N)



To the Bd of Rev with the certified copy of the order in Pt 11-21 of (N)

Note The certified copy of the order wanted by the Board is for pages 11-22 of Go 773 Rev D) 18-4-28 (N) - It may be returned to the Board ~~if the copy of the order may be~~ ~~assessed~~ A copy of this order will be kept in that Go.

• After usage this may be attached with Go 873 Rev D) 18-4-28 (N)

not necy. Attach this with G.O. 873/28 after usage

3.12.30